



**TEXAS INDIGENT DEFENSE  
COMMISSION**

**Fiscal Monitoring Report**

**Kent County, Texas**

**FY 2015 Indigent Defense Expenses**

**Final Report**

**March 30, 2017**

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## **EXECUTIVE SUMMARY**

Kent County's fiscal monitoring desk review began on July 18, 2016. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grants.

The expenditure period of October 1, 2014 to September 30, 2015 (FY2015) was reviewed during the fiscal monitoring visit as well as documents to support the discretionary grant funding.

### **Summary of Findings**

- Attorney fee vouchers did not contain the itemization that is needed to comply with Article 26.05(c) of the Texas Code of Criminal Procedure.
- Attorney CLE hours are not maintained to verify attorney qualifications.

### **Objective**

The objectives of this review were to:

- determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grant;
- validate policies and procedures relating to indigent defense services;
- provide recommendations pertaining to operational efficiency; and
- assist with any questions or concerns on the indigent defense program requirements.

### **Scope**

The county's indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grants during FY2015. Records provided by the Kent County Auditor's Office were reviewed.

### **Methodology**

To accomplish the objectives, the fiscal monitor talked with the county treasurer and the county judge. The fiscal monitor also reviewed:

- 100% of the paid attorney fee vouchers for verification;
- general ledger transactions provided by the Kent County Treasurer's Office;
- IDER;
- attorney fee schedule;
- public attorney appointment list and attorney applications;
- attorney criminal and juvenile continuing legal education training documentation;
- any applicable contracts;
- the county's local indigent defense plan; and
- data submitted by the district judge.

# **DETAILED REPORT**

## **BACKGROUND INFORMATION**

### **County Background**

Kent County was created in 1876 from Young and Bexar districts. The County was organized in 1892 and is named for Andrew Kent, a defender at the Battle of the Alamo. The County serves an estimated population of 785. The County seat is Matador. Kent County is a political subdivision of the State of Texas. The County occupies an area of 903 square miles, of which .4 square miles is water. The neighboring counties are Dickens, Stonewall, Fisher, Scurry, Garza, King and Crosby.

### **Commission Background**

In January 2002, the 77<sup>th</sup> Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82<sup>nd</sup> Texas Legislature reorganized the Task Force as the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council, and is administratively attached to the Office of Court Administration (OCA).

The Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the constitution and state law.

The purpose of the Commission is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and the State of Texas. The Commission conducts these reviews based on the directive in Section 79.037(c) Texas Government Code, to “monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant...”, as well as Section 173.401(a), Texas Administrative Code, which provides that “the Commission or its designees will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.”

### **Formula Grant**

The County submitted the FY 2015 indigent defense on-line grant application to assist in the provision of indigent defense services. Kent County met the formula grant eligibility requirements and was awarded \$6,058 for FY 2015.

### **Discretionary Grant**

Kent County did not apply for a discretionary grant for FY 2015; therefore, no discretionary grant funds were reviewed.

## **DETAILED FINDINGS, RECOMMENDATIONS AND RESPONSES**

### **Finding One**

The Indigent Defense Expenditure report submitted by the county indicated ten attorney fee vouchers were paid during FY 2015. Ten vouchers were provided for review. Nine documents were titled “Order to Pay Court Appointed Attorney” and one was titled “Amended Order to Pay Court Appointed Attorney.” It did not appear that the voucher included in the indigent defense plan was used. These orders to pay were styled with the identity of the court, the defendant and case number. The order listed the name of the attorney and how much to be paid and was signed by the judge. None of these orders appeared to be submitted by the attorney requesting an amount to be paid or listing the services provided. These orders did not meet the statutory requirements of the Code of Criminal Procedure (CCP) Article 26.05(c) because they did not include vouchers with the amount requested to be paid by the attorney, level of case or itemization of work performed. CCP Article 26.05(c) reads in part “...No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount...” It is unclear if the vouchers were paid based on the published fee schedule as the level of case is not identified. The published fee schedule indicates that amount to be paid for a plea is based on the level of offense: \$350 for state jail felony, \$400 for 2<sup>nd</sup> or 3<sup>rd</sup> degree felony, and \$450.00 for 1<sup>st</sup> degree felony. Most vouchers were paid either \$350.00 or \$400.00. One voucher was paid \$600.00 and that amount is not listed on fee schedule.

Review of the attorney fee voucher included in the county plan showed that it does not provide for the attorney to request a dollar amount to be paid. Also the offense level is not readily available for the auditor’s office to complete reporting required in the annual Indigent Defense Expenditure Report. The voucher does not provide space for the judge to sign the voucher or to provide written findings if he disapproves the amount the attorney requested. Title 1, Chapter 174, Texas Administrative Code, Indigent Defense Policies and Standards defines an itemized fee voucher as an instrument that shall include at a minimum all the information necessary for the county auditor or other designated official to complete the expenditure report required to be submitted to the Office of Court Administration by §71.0351, Government Code.

### **Recommendation:**

The judges should review the attorney fee voucher included within the county’s indigent defense plan and incorporate changes that would ensure compliance of CCP Article 26.05(c). The county should require that attorneys submit these vouchers which will allow for the minimum information for the auditor/treasurer to complete the required reporting.

**County Response:**

**Kent County Action Plan**

*The Kent County Indigent Defense Plan will be updated to include the model attorney voucher as provided by the Texas Indigent Defense Commission. The 39<sup>th</sup> District Court is currently using the model attorney fee voucher. The District Court will provide the Kent County Judge with a copy of the model attorney fee voucher to use in County Court cases and instruct the County Judge to begin using this form immediately.*

*A copy of the model attorney fee voucher currently being used is enclosed.*

**Contact Person:** *Judge Shane Hadaway*

**Completion Date:** *Completed as of February 1, 2017*

**Finding Two**

Title 1, Texas Administrative Code (TAC) rule §174.1 provides that “an attorney who is otherwise eligible for appointment under Article 26.04, CCP may be appointed under this rule only if the attorney completes a minimum of six hours of continuing legal education (CLE) pertaining to criminal law during each 12-month reporting period.” Additionally, for appointment in juvenile cases, TAC rule §174.2 states that “an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period.” Alternatively, the rule provides an attorney is eligible if the attorney is board certified in criminal law or juvenile law, respectively.

The County could not document that attorney’s assigned criminal cases had met the CLE requirements to be eligible for appointment. It is not sufficient to assume that as the attorneys maintain their law license that the required criminal law CLE hours were obtained. The county may have made ineligible payments to these attorneys. (TAC rule §174.4 does allow for emergency appointment when no attorney meeting the CLE requirements is available).

**Recommendation:**

The county must implement a procedure to verify that all attorneys included on the current appointment list have met the current year’s CLE requirements.

**County Response:**

## **Kent County Action Plan**

*For criminal cases, the 39<sup>th</sup> District Court will send a form to each attorney on the Court Appointment List to complete. The form will have the attorney certify to the number of hours of criminal law CLE the attorney completed during the 12-month reporting period. Further, the attorney will certify if they are board certified in criminal law. The forms shall be returned to the District Court no later than the 15<sup>th</sup> day after the reporting period ends. The District Court will keep a record of all responses from attorneys. Any attorney not completing the required 6 hours criminal law CLE requirement or failing to return the form will be removed from the appointment list until compliance with this requirement. The District Court will have a reporting period from January 1- December 31.*

*The District Court will provide the Kent County Judge with a copy of this form and instruct the County Judge to obtain this information for all attorneys on the County Court Appointment List.*

*For Juvenile Cases – the District Court will use the same procedures to obtain the information for juvenile law CLE compliance as used for criminal cases.*

**Contact person(s):** *Judge Shane Hadaway*

**Completion date:** *Completed as of February 1, 2017*

# **APPENDIXES**

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>KENT COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Population Estimate	849	789	785
Juvenile Assigned Counsel	\$0	\$0	\$0
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$0	\$11,891	\$3,950
Adult Misdemeanor Assigned Counsel	\$0	\$0	\$0
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$3,238	\$0	\$0
Adult Misdemeanor Appeals	\$326	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$0	\$1,397	\$0
Other Direct Litigation	\$0	\$0	\$0
Total Court Expenditures	\$3,565	\$13,287	\$3,950
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$1,706	\$0	\$0
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$5,271	\$13,287	\$3,950
Formula Grant Disbursement	\$5,745	\$5,271	\$6,058
Discretionary Disbursement	\$0	\$0	\$0
Reimbursement of Attorney Fees	\$0	\$0	\$0
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Assigned Counsel Cases	7	4	10

**Indigent Defense Expenditure Reporting**

Source: Texas Indigent Defense Commission records

<b>Kent County</b>				
<b>Year</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Texas 2015</b>
Population (Non-Census years are estimates)	849	789	785	27,213,214
Felony Charges Added (from OCA report)	12	10	8	271,744
Felony Cases Paid	4	0	10	193,560
% Felony Charges Defended with Appointed Counsel	33%	0%	125%	71 %
Felony Trial Court-Attorney Fees	\$0	\$11,891	\$3,950	\$110,036,405
Total Felony Court Expenditures	\$0	\$13,287	\$3,950	\$126,091,674
Misdemeanor Charges Added (from OCA report)	7	6	0	503,299
Misdemeanor Cases Paid	3	4	0	222,408
% Misdemeanor Charges Defended with Appointed Counsel	43%	67%		44 %
Misdemeanor Trial Court Attorney Fees	\$0	\$0	\$0	\$39,141,724
Total Misdemeanor Court Expenditures	\$0	\$0	\$0	\$40,061,131
Juvenile Charges Added (from OCA report)	1	0	0	31,813
Juvenile Cases Paid	0	0	0	41,068
Juvenile Attorney Fees	\$0	\$0	\$0	\$11,072,434
Total Juvenile Expenditures	\$0	\$0	\$0	\$11,747,908
Total Attorney Fees	\$3,565	\$11,891	\$3,950	\$165,942,108
Total ID Expenditures	\$5,271	\$13,287	\$3,950	\$238,029,838
Increase In Total Expenditures over Baseline	369%	1.081%	251%	168%
Total ID Expenditures per Population	\$6.21	\$16.84	\$5.03	\$8.75
Commission Formula Grant Disbursement	\$5,745	\$5,271	\$6,058	\$23,931,689
Cost Recouped from Defendants	\$0	\$0	\$0	\$11,530,419

**Indigent Defense Expenditure Reporting**

Source: Texas Indigent Defense Commission records

## APPENDIX B – CRITERIA

### Criteria

- Uniform Grant Management Standards
- Texas Government Code, Section 79.036. Indigent Defense Information
- Texas Government Code, Section 79.037. Technical Support; Grants
- Code of Criminal Procedures Art 26.04 Procedures for Appointing Counsel
- Code of Criminal Procedures Art 26.05 Compensation of Counsel Appointed to Defend
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.1
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.2
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter B Definitions
- FY2015 Indigent Defense Expenditure Report Manual found at:  
<http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>

# APPENDIX C – COUNTY RESPONSE ENCLOSURES

## Attorney Fee Voucher

1. Jurisdiction <input type="checkbox"/> District <input type="checkbox"/> County  <input type="checkbox"/> County Court at Law Court # _____		2. County		3. Cause Number		Offense		4. Proceedings <input type="checkbox"/> Trial-Jury <input type="checkbox"/> Trial-Court  <input type="checkbox"/> Plea-Open <input type="checkbox"/> Plea- Bargain  <input type="checkbox"/> Other _____	
5. In the case of: <p style="text-align: center;">State of Texas v</p>									
6. Case Level <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Juvenile <input type="checkbox"/> Appeal <input type="checkbox"/> Capital Case  <input type="checkbox"/> Revocation – Felony <input type="checkbox"/> Revocation – Misdemeanor <input type="checkbox"/> No Charges Filed <input type="checkbox"/> Other _____									
7. Attorney (Full Name)				9. Attorney Address (Include Law Firm Name if Applicable)				10. Telephone	
8. State Bar Number		8a. Tax ID Number						11. Fax	
12. Flat Fee – Court Appointed Services								12a. Total Flat Fee	
								\$	
13.	In Court Services			Hours	Dates		13a. Total In Court Compensation.		
	Rate per Hour =		Total hours						
14.	Out of Court Services			Hours	Dates		14a. Total Out of Court Compensation.		
	Rate per Hour =		Total hours						
15.	Investigator				Amount		15a. Total Investigator Expenses		
							\$		
16.	Expert Witness				Amount		16a. Total Expert Witness Expenses		
							\$		
17.	Other Litigation Expenses				Amount		17a. Total Other Litigation Expenses		
							\$		
18. Time Period of service Rendered: From _____ to _____ Date Date									
19. Additional Comments								20. Total Compensation and Expenses Claimed	
21. Attorney Certification – I, the undersigned attorney, certify that the above information is true and correct and in accordance with the laws of the State of Texas. The compensation and expenses claimed were reasonable and necessary to provide effective assistance of counsel.									
<input type="checkbox"/> Final Payment <input type="checkbox"/> Partial Payment									
Signature _____						Date _____			
22. SIGNATURE OF PRESIDING JUDGE:								Amount Approved:	
Reason(s) for Denial or Variation									

**KENT COUNTY COURT**  
**COURT APPOINTED ATTORNEY CLE COMPLIANCE**  
**FOR INDIGENT DEFENDANTS**

In order to remain on the appointment list for criminal cases in the Kent County Court, the following information shall be provided to the Court.

Please note that a minimum of 6 hours of Continuing Legal Education in criminal law for the calendar year is required to remain on the appointment list or be board certified in criminal law.

The following information shall be returned to the Kent County Court no later than JANUARY 15, 20\_\_\_\_\_.

NAME: \_\_\_\_\_

NUMBER OF CONTINUING LEGAL EDUCATION HOURS COMPLETED IN CRIMINAL LAW FOR THE CALENDAR YEAR ENDING DECEMBER 31, 20\_\_\_\_\_: \_\_\_\_\_  
*(PLEASE ATTACH OF A COPY OF YOUR MCLE VERIFICATION REPORT)*

ARE YOU BOARD CERTIFIED IN CRIMINAL LAW (YES/NO)? \_\_\_\_\_

ARE YOU IN GOOD STANDING WITH THE STATE BAR OF TEXAS (YES/NO)? \_\_\_\_\_

HAVE YOU HAD ANY DISCIPLINARY PROCEEDINGS FILED AGAINST YOU FOR THE CALENDAR YEAR ENDING DECEMBER 31, 20\_\_\_\_\_  
(YES/NO)? \_\_\_\_\_

I CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

## **APPENDIX D – DISTRIBUTION LIST**

Honorable Jim C. White  
Kent County Judge  
P.O. Box 6  
Jayton, TX 79528

Honorable Shane Hadaway  
39<sup>th</sup> District Court Judge  
P.O. Box 966  
Haskell, TX 79521-0966

Ms. Linda McCurry  
County Treasurer  
Kent County  
P.O. Box 8  
Jayton, TX 79528

Mr. James D. Bethke  
Executive Director, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Mr. Wesley Shackelford  
Deputy Director, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Mr. Edwin Colfax  
Grants Program Manager, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701